

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ALICIA D. McINTURFF,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 1:14-CV-3001-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment. ECF Nos. 18, 19. Plaintiff is represented by D. James Tree. Defendant is represented by Nicole A. Jabaily. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

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1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g),  
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social  
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is  
7 limited: the Commissioner's decision will be disturbed "only if it is not supported  
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
9 1158 (9th Cir. 2012). "Substantial evidence" means relevant evidence that "a  
10 reasonable mind might accept as adequate to support a conclusion." *Id.* at 1159  
11 (quotation and citation omitted). Stated differently, substantial evidence equates to  
12 "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and  
13 citation omitted). In determining whether this standard has been satisfied, a  
14 reviewing court must consider the entire record as a whole rather than searching  
15 for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. If the evidence in the record "is  
18 susceptible to more than one rational interpretation, [the court] must uphold the  
19 ALJ's findings if they are supported by inferences reasonably drawn from the  
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

#### 6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” 42 U.S.C.  
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.  
19 § 416.920(a)(4)(i)–(v). At step one, the Commissioner considers the claimant’s  
20 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

1 “substantial gainful activity,” the Commissioner must find that the claimant is not  
2 disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
6 “any impairment or combination of impairments which significantly limits [his or  
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
9 this severity threshold, however, the Commissioner must find that the claimant is  
10 not disabled. *Id.*

11 At step three, the Commissioner compares the claimant's impairment to  
12 several impairments recognized by the Commissioner to be so severe as to  
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.  
14 § 416.920(a)(4)(iii). If the impairment is as severe as or more severe than one of  
15 the enumerated impairments, the Commissioner must find the claimant disabled  
16 and award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity  
18 of the enumerated impairments, the Commissioner must pause to assess the  
19 claimant's “residual functional capacity.” Residual functional capacity (“RFC”),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations, 20 C.F.R.

2 § 416.945(a)(1), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
6 capable of performing past relevant work, the Commissioner must find that the  
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
12 must also consider vocational factors such as the claimant's age, education and  
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.  
15 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the  
16 analysis concludes with a finding that the claimant is disabled and is therefore  
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.  
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616F.3d 1068, 1071 (9th Cir. 2010). If  
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such  
2 work “exists in significant numbers in the national economy.” 20 C.F.R.  
3 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 4 ALJ FINDINGS

5 Plaintiff filed an application for supplemental security income on May 24,  
6 2010. Tr. 22, 139–46. Plaintiff’s claim was denied initially and on  
7 reconsideration. Tr. 82–85, 89–90. Plaintiff requested a hearing before an ALJ  
8 which was held on June 6, 2012. Tr. 36–71. The ALJ rendered a decision denying  
9 Plaintiff supplemental security income on August 29, 2012. Tr. 22–31.

10 At step one, the ALJ found that Plaintiff had not engaged in substantial  
11 gainful activity since May 24, 2010, the application date. Tr. 24. At step two, the  
12 ALJ found that Plaintiff had the following severe impairment: degenerative disk  
13 disease with disk herniations. *Id.* At step three, the ALJ found that Plaintiff did  
14 not have an impairment or combination of impairments that met or medically  
15 equaled a listed impairment. Tr. 25.

16 The ALJ then concluded that Plaintiff’s had the RFC to  
17 perform a less than full range of sedentary work as defined in 20 CFR  
18 416.967(a). The claimant can lift and carry up to 10 pounds, stand  
19 and/or walk for 2 hours in an 8-hour workday, and sit in 1-hour  
20 increments up to 8 hours in an 8-hour workday. She can occasionally  
perform balancing, stooping, kneeling, crouching, and climbing of  
ramps and stairs but is limited to no climbing of ropes, ladders, or  
scaffolds and no crawling. The claimant should avoid work at  
unprotected heights or around dangerous moving machinery. She

1 should further avoid exposure to extremes of temperature changes,  
2 extremes of cold or heat, and moderate exposure to vibration. She can  
3 remember, understand, and carry out simple and detailed, but not  
complex, tasks or instructions typical of occupations with a situational  
vocational preparation (SVP) of 1 or 2.

4 Tr. 25–26. The ALJ found, at step four, that Plaintiff was unable to perform any  
5 past relevant work. Tr. 29–30. At step five, the ALJ found that, considering  
6 Plaintiff’s age, education, work experience, and RFC, there exist significant  
7 numbers of jobs in the national economy that Plaintiff could perform in  
8 representative occupations such as assembly and packaging. Tr. 30–31. On that  
9 basis, the ALJ concluded that Plaintiff was not disabled as defined in the Social  
10 Security Act. Tr. 31.

11 The Appeals Council denied Plaintiff’s request for review on November 7,  
12 2013, making the ALJ’s decision the Commissioner’s final decision for purposes  
13 of judicial review. Tr. 1–6; 20 C.F.R. §§ 404.981, 416.1484, 422.210.

#### 14 ISSUES

15 Plaintiff essentially raises two issues for review. Plaintiff argues that the  
16 ALJ erred by rejecting Plaintiff’s testimony based upon erroneous credibility  
17 findings. ECF No. 18 at 13–19. Plaintiff also argues that the ALJ erred by failing  
18 to consider or improperly rejecting four medical opinions. ECF No. 18 at 4–13.

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## DISCUSSION

**A. Plaintiff's Credibility**

Plaintiff contends that the ALJ erred by rejecting Plaintiff's subjective complaints about the severity of impairments caused by her back pain. ECF No. 18 at 13. Plaintiff argues that the ALJ based her credibility determination upon "erroneous credibility findings," and that were Plaintiff's testimony credited, as Plaintiff contends it should have been, "it becomes clear that the claimant is incapable of working on a regular and continuing basis and thus is disabled according to the statutory definition." *Id.* at 13, 19.

In social security proceedings, a claimant must prove the existence of a physical or mental impairment with "medical evidence consisting of signs, symptoms, and laboratory findings." 20 C.F.R. §§ 416.908, 416.927. A claimant's statements about his or her symptoms alone will not suffice. 20 C.F.R. §§ 416.908, 416.927. Once an impairment has been proven to exist, an ALJ "may not reject a claimant's subjective complaints based solely on a lack of objective medical evidence to fully corroborate the alleged severity of pain." *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9th Cir. 1991) (en banc). As long as the impairment "could reasonably be expected to produce [the] symptoms," the claimant may offer a subjective evaluation as to the severity of the impairment. *Id.* This rule



1 recognizes that the severity of a claimant's symptoms "cannot be objectively  
2 verified or measured." *Id.* at 347 (quotation and citation omitted).

3       However, an ALJ may conclude that the claimant's subjective assessment is  
4 unreliable, so long as the ALJ makes "a credibility determination with findings  
5 sufficiently specific to permit [a reviewing] court to conclude that the ALJ did not  
6 arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958  
7 (9th Cir. 2002); *see also Bunnell*, 947 F.2d at 345 ("[A]lthough an adjudicator may  
8 find the claimant's allegations of severity to be not credible, the adjudicator must  
9 specifically make findings which support this conclusion."). In making such a  
10 determination, the ALJ may consider, *inter alia*: (1) the claimant's reputation for  
11 truthfulness; (2) inconsistencies in the claimant's testimony or between her  
12 testimony and her conduct; (3) the claimant's daily living activities; (4) the  
13 claimant's work record; and (5) testimony from physicians or third parties  
14 concerning the nature, severity, and effect of the claimant's condition. *Thomas*,  
15 278 F.3d at 958. If there is no evidence of malingering, the ALJ's reasons for  
16 discrediting the claimant's testimony must be "specific, clear and convincing."  
17 *Chaudhry v. Astrue*, 688 F.3d 661, 672 (9th Cir. 2012) (quotation and citation  
18 omitted). The ALJ "must specifically identify the testimony she or he finds not to  
19 be credible and must explain what evidence undermines the testimony." *Holohan*  
20 *v. Massanari*, 246 F.3d 1195, 1208 (9th Cir. 2001).

1 Here, the ALJ found that the medical evidence confirmed the existence of  
2 degenerative disk disease and ongoing chronic pain. Tr. 26–27. The ALJ did not  
3 credit Plaintiff’s testimony about the severity of her pain and its impact on her  
4 functional capacity. There is no evidence of malingering in this case, and therefore  
5 the Court must determine whether the ALJ provided clear and convincing reasons  
6 not to credit Plaintiff’s testimony of the limiting effect of her chronic pain.  
7 *Chaudhry*, 688 F.3d at 672. The Court concludes that the ALJ did provide clear  
8 and convincing reasons.

9 First, the ALJ found that the while the objective medical evidence confirmed  
10 the presence of chronic pain, “the records contain no objective findings that  
11 corroborate [Plaintiff’s] allegations of disabling functional limitations.” Tr. 27.  
12 The ALJ noted that Plaintiff’s physical examinations showed ongoing tenderness  
13 in the lumbar spine with pain on extension and flexion, but “no focal weakness or  
14 atrophy in the extremities, with normal reflexes throughout.” Tr. 27, 285. The  
15 ALJ noted that in a December 2009 examination, Dr. Daniel Kwon found Plaintiff  
16 had a “mildly positive straight leg raise test, but not classic with radicular pain but  
17 rather just kind of radiating symptoms in the posterior thighs.” Tr. 27, 285.  
18 Examinations in April and July 2011 showed negative straight leg testing and  
19 normal heel to toe walking. Tr. 27, 281, 282. Plaintiff’s primary care physician,  
20

1 Dr. Natalia Luera, consistently noted that Plaintiff had normal gait and station and  
2 was not in apparent distress. Tr. 27, 234, 235, 236, 237.

3 Indeed, the ALJ found that the medical records supported a conclusion that  
4 Plaintiff's pain was well managed by her medications. Tr. 27. An independent  
5 review of the record confirms the ALJ's finding that Plaintiff's physicians  
6 repeatedly noted that her medication was effective in controlling her pain level and  
7 keeping it stable. *E.g.*, Tr. 273, 281, 282 ("A combination of her medications does  
8 seem to control her medical problems, give her moderate relief of her pain itself,  
9 and give her the ability to function."). In both March and May 2011, Plaintiff told  
10 her treating physicians that the pain medication was working well. Tr. 27, 419  
11 (May 2011), 465 (March 2011).<sup>1</sup>

12  
13 <sup>1</sup> The ALJ also relied on Plaintiff's reported activities of camping, huckleberry and  
14 mushroom picking, attending a gardening club, and swimming that were  
15 inconsistent with someone claiming total disability. Tr. 28. Plaintiff contends this  
16 was in error because a claimant need not be "utterly incapacitated" to meet the  
17 definition of disabled. ECF No. 13 at 16 (quoting *Vertigan v. Halter*, 260 F.3d  
18 1044, 1050 (9th Cir. 2001)). But those activities, the ALJ found, were inconsistent  
19 with Plaintiff's level of claimed disability and consistent with the finding that her  
20 pain medications allow her to perform daily activities without significant pain.

1 “While subjective pain testimony cannot be rejected on the sole ground that  
2 it is not fully corroborated by objective medical evidence, the medical evidence is  
3 still a relevant factor in determining the severity of the claimant’s pain and its  
4 disabling effects.” *Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001).  
5 Moreover, “[c]ontradiction in the medical record is a sufficient basis for rejecting  
6 the claimant’s subjective testimony.” *Carmickle v. Comm’r, Soc. Sec. Admin.*, 533  
7 F.3d 1155, 1161 (9th Cir. 2008). The ALJ did not err by basing her credibility  
8 determination, in part, upon the objective medical evidence which did not support  
9 the debilitating pain Plaintiff subjectively claimed, but in fact contradicted it.

10 Second, the ALJ found Plaintiff’s statements about her usage of pain  
11 medications were inconsistent with her drug screening. Tr. 28. Drug screenings of  
12 Plaintiff were negative for Oxycodone in January, February, and March 2012, as  
13 well as in December 2009 and March 2010. Tr. 252, 253, 432, 433, 434. While  
14 Plaintiff tested positive in April and May 2010 (Tr. 250, 251), the ALJ found the  
15 multiple negative tests suggested that “the claimant may have overstated her  
16 symptoms as they were not of such severity as to require the use of [her  
17 prescription] narcotics . . . .” Tr. 28. An ALJ may properly rely upon  
18 inconsistencies in a claimant’s claimed limitations and a claimant’s conduct.  
19 *Thomas*, 278 F.3d at 958–59. The ALJ found Plaintiff’s failure to take her  
20 medications was inconsistent with her claimed level of pain. Such an inadequately

1 explained failure to follow a prescribed course of treatment “can cast doubt on the  
2 sincerity of the claimant’s pain testimony.” *Fair v. Brown*, 885 F.2d 597, 603 (9th  
3 Cir. 1989). The ALJ did not err in relying upon these inconsistencies in weighing  
4 Plaintiff’s credibility.

5 The ALJ also found that Plaintiff’s work history reflected a “pattern of  
6 marginal intermittent and part-time work . . . indicating that her impairments may  
7 not be the sole reason for her current inability to sustain full-time competitive  
8 employment, and that a lack of interest in working, unrelated to any medical  
9 condition, may account for her current lack of employment.” Tr. 28. In support of  
10 this conclusion, the ALJ relied upon two sections of the record in which Plaintiff,  
11 first, requested a note from her physician stating that she could not work because  
12 of her pain and so she could take care of her daughter, Tr. 245, and, second, where  
13 Plaintiff reported it was hard for her to figure out how to work with a high-needs  
14 four-year-old child at home, Tr. 267. Plaintiff objects to the ALJ’s conclusion  
15 because “[t]here is no evidence [Plaintiff] lied about her pain to stay home with her  
16 daughter but merely made her doctor aware of her situation.” ECF No. 18 at 18.

17 The ALJ inferred from Plaintiff’s sporadic work history—which she does  
18 not contest—and from Plaintiff’s comments about wanting to stay home with her  
19 child, that her lack of employment was not due *solely* to Plaintiff’s medical  
20 impairments. Despite Plaintiff’s protestations, the ALJ’s inference was not

1 unreasonable, and must therefore be upheld. *See, e.g., Batson v. Comm'r of Soc.*  
2 *Sec. Admin.*, 359 F.3d 1190, 1193 (9th Cir. 2004) (“[T]he Commissioner's findings  
3 are upheld if supported by inferences reasonably drawn from the record.”);  
4 *Thomas*, 278 F.3d at 959 (stating an ALJ may consider both work history and  
5 inconsistent statements). The ALJ’s credibility determination was based upon  
6 specific, clear, and convincing reasons sufficient for this Court to conclude that the  
7 determination was not arbitrary. *See Thomas*, 278 F.3d at 958–59. As such, the  
8 ALJ properly evaluated and rejected Plaintiff’s testimony.

#### 9 **B. Medical Opinions**

10 Plaintiff also contends the ALJ erred in rejecting the opinions of four  
11 medical providers. A treating physician’s opinions are entitled to substantial  
12 weight in social security proceedings. *Bray v. Comm’r of Soc. Sec. Admin.*, 554  
13 F.3d 1219, 1228 (9th Cir.2009). If a treating or examining physician’s opinion is  
14 uncontradicted, an ALJ may reject it only by offering “clear and convincing  
15 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d  
16 1211, 1216 (9th Cir. 2005). However, the ALJ need not accept a physician’s  
17 opinion that is “brief, conclusory and inadequately supported by clinical findings.”  
18 *Bray*, 554 F.3d at 1228 (quotation and citation omitted). An ALJ may also reject a  
19 treating physician’s opinion which is “based to a large extent on a claimant’s self-  
20

1 reports that have been properly discounted as incredible.” *Tommasetti v. Astrue*,  
2 533 F.3d 1035, 1041 (9th Cir. 2008) (internal and quotation and citation omitted).

3 1. Dr. Natalia Luera

4 Dr. Natalia Luera was Plaintiff’s treating physician. Tr. 29. In July 2012,  
5 Dr. Luera opined that Plaintiff would need to lie down two or three times per day  
6 for forty-five to seventy-five minutes each time because of Plaintiff’s chronic pain.  
7 Tr. 503. The ALJ gave little weight to this opinion because it was based on  
8 Plaintiff’s subjective complaints made that same day. Tr. 29, 502 (“The patient  
9 states she must lie down 2–3 x per day for 45–75 minutes each session due to  
10 increased pain.”). The ALJ discounted Plaintiff’s subjective statements as  
11 incredible, and may properly assign little weight to Dr. Luera’s opinion which is  
12 based upon Plaintiff’s self-reporting. *Tommasetti*, 533 F.3d at 1041. The ALJ also  
13 assigned Dr. Luera’s opinion little weight because it was inconsistent with her  
14 overall opinion. Tr. 29. Dr. Luera opined that Plaintiff’s condition would not  
15 deteriorate from regular and continuous work, though Plaintiff may miss three days  
16 a month due to her medical condition. Tr. 504. As the ALJ noted, Dr. Luera  
17 provided no clinical support for the limitations listed. Tr. 29. The Court’s  
18 independent review of the record confirms that the treatment notes make no  
19 mention of such a debilitating limitation. Contrary to Plaintiff’s assertion, the ALJ  
20 did not reject Dr. Luera’s opinion merely because Dr. Luera considered subjective

1 symptoms in her analysis. ECF No. 18 at 6. The ALJ accepted portions of the  
2 opinion, but rejected the portion that was both inconsistent with the record and  
3 founded only upon Plaintiff's subjective complaints.

4 The ALJ did not err in rejecting Dr. Luera's conclusory opinion that was  
5 inadequately supported by the record. *See Bray*, 554 F.3d at 1228.

6 2. Dr. Jennifer Lentz

7 The ALJ gave limited weight to the opinion of Dr. Jennifer Lentz that  
8 Plaintiff was only capable of sedentary work from one to ten hours per week. Tr.  
9 29. The ALJ did not credit this opinion because it was entered upon a disability  
10 form that Dr. Lentz filled out alongside Plaintiff, indicating that Dr. Lentz may  
11 have been relying more on Plaintiff's subjective complaints than on objective  
12 clinical findings. Tr. 29, 206–08, 240. Plaintiff contends that Dr. Lentz's opinion  
13 is not based upon Plaintiff's subjective statements, but upon the MRI results. ECF  
14 No. 18 at 8.

15 Plaintiff's MRI and x-ray results confirm the ALJ's finding that Plaintiff  
16 suffered from degenerative disk disease. However, these results alone do not  
17 confirm the severity of Plaintiff's limitations. The ALJ agreed with Dr. Lentz in  
18 part and found that Plaintiff was limited to a sedentary RFC assessment. Tr. 29.  
19 But, the ALJ concluded that a more severe limitation was inconsistent with the  
20 medical record. Plaintiff has not pointed to any clinical findings or treatment notes



1 of Dr. Lentz that would indicate that Plaintiff was as severely limited in her  
2 functional capacity as indicated on the disability form. Thus, the ALJ did not err in  
3 assigning limited weight to an opinion unsupported by clinical evidence and which  
4 opinion appears to be based on Plaintiff's subjective complaints that have been  
5 discounted.

6 3. Dr. Daniel Kwon

7 Plaintiff asserts that the ALJ failed to consider the findings and opinions of  
8 Dr. Daniel Kwon. ECF No. 18 at 10. Specifically, Plaintiff argues that Dr.  
9 Kwon's opinions support Dr. Luera's and Dr. Lentz's opinions and that his finding  
10 of "chronic lumbalgia" should have been listed as a step two severe impairment.  
11 ECF No. 18 at 11. In reply, Plaintiff again contends the ALJ failed to discuss or  
12 weigh the medical findings and opinions of Dr. Kwon. ECF No. 22 at 4.

13 Defendant argues the ALJ did discuss Dr. Kwon's findings, that Plaintiff  
14 fails to show any limitations opined by Dr. Kwon that have not been incorporated  
15 into the ALJ's RFC assessment, and that "chronic lumbalgia" is another term for  
16 low back pain, so it is not properly listed as an impairment, but rather a symptom.  
17 ECF No. 19 at 16–17.

18 Dr. Kwon treated Plaintiff at the Water's Edge Pain Relief Institute. *See*,  
19 *e.g.*, Tr. 287. While the ALJ may not have cited Dr. Kwon by name, the ALJ  
20 discussed and cited to the reports of Dr. Kwon and others at Water's Edge by

1 reference to them in Exhibit 10F in the administrative record. Tr. 27–28. Plaintiff  
2 has not otherwise identified any opinion of Dr. Kwon that has not been addressed  
3 by the ALJ’s RFC assessment.

4 Plaintiff’s contention that “chronic lumbalgia” should have been considered  
5 an impairment at step two is likewise harmless. Lumbalgia is literally lumbar  
6 (lower back) pain. In this case, Plaintiff’s chronic lower back pain is a symptom of  
7 her degenerative disk disease. It would not properly be considered a separate  
8 impairment at step-two. But, the ALJ properly considered Plaintiff’s chronic pain  
9 as a symptom of her impairment while determining Plaintiff’s RFC. Thus, no error  
10 has been shown on this record.

11 4. Paul Schneider, Ph.D.

12 Plaintiff contends that the ALJ also erred by failing to consider the opinion  
13 of Paul Schneider, Ph.D., who performed a psychological evaluation of Plaintiff in  
14 December 2010. ECF No. 18 at 12. Specifically, Plaintiff contends that the ALJ  
15 failed to consider that Dr. Schneider diagnosed her with a mood disorder in  
16 addition to chronic pain syndrome. *Id.*

17 Defendant counters that the ALJ did cite to Dr. Schneider’s opinion and that  
18 Plaintiff has failed to show any harmful error. ECF No. 19 at 17–18.

19 Dr. Schneider’s single report was included as part of Plaintiff’s Water’s  
20 Edge reports and treatment notes in Exhibit 10F (Tr. 266–70), and was cited twice

1 by the ALJ in his findings. Tr. 28. Dr. Schneider opined that Plaintiff suffered  
2 from “[m]ood disorder, not otherwise specified.” Tr. 270. The ALJ did not  
3 specifically discuss these findings of Dr. Schneider’s. While Plaintiff raised no  
4 challenge to the ALJ’s step-two evaluation of her alleged mental impairments, the  
5 ALJ discussed, at step-two, Plaintiff’s alleged mental impairments. Tr. 24. The  
6 ALJ found that although Plaintiff “alleged disability due to depression, treatment  
7 records show [Plaintiff] to receive no more than medication management from her  
8 primary care physician. She is not under the care of a mental health professional  
9 nor is she undergoing counseling services.” *Id.* The ALJ gave significant weight  
10 to the opinion of Jeff Teal, Ph.D., who performed a consultative examination of  
11 Plaintiff, and concluded that her depressive symptoms would not significantly  
12 interfere with sustained full-time employment. Tr. 24, 214.

13 Plaintiff has not identified anything in Dr. Schneider’s opinion—other than  
14 the mood disorder diagnosis—that the ALJ failed to discuss. The Court’s review  
15 of Dr. Schneider’s report confirms that the relevant, material evidence was  
16 adequately discussed by the ALJ at step two. Plaintiff has failed to show how the  
17 ALJ erred by not specifically discussing Dr. Schneider’s report in more detail. As  
18 such, any error in not discussing Dr. Schneider’s report is harmless.

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**IT IS HEREBY ORDERED:**

1. Plaintiff's Motion for Summary Judgment (ECF No. 18) is **DENIED**.
2. Defendant's Motion for Summary Judgment (ECF No. 19) is  
**GRANTED**.

The District Court Executive is hereby directed to file this Order, enter Judgment for Defendant, provide copies to counsel, and **CLOSE** the file.

**DATED** December 30, 2014.



*Thomas O. Rice*  
THOMAS O. RICE  
United States District Judge